

**REMARKS**

Claims 1, 3-8 and 10-11 remain in the application. Claim 1 is in independent form. Claims 2 and 9 have previously been canceled, and Claim 12 has been withdrawn from further consideration.

The Applicant respectfully requests entrance of these amendments to Claim 1 to overcome the claim rejection and to further distinguish the Applicant's invention from the cited art. These amendments were not earlier presented because the claim objection is new, and because the clarifying amendments are responsive to new grounds of rejection.

The Applicant respectfully solicits entrance of these amendments even if they do not place the application in condition for allowance to place the claims in better condition for appeal, if necessary.

**Claim Rejections Under 35 U.S.C. § 103**

Claims 1, 3-8 and 10 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Graham et al. (US 2,635,906), in view of Maughan (US 5,564,853), Gaines et al. (US 4,076,344), and Herbenar (US 3,128,110).

Claim 11 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Graham et al., Maughan, Gaines et al. and Herbenar, and further in view of Kern, Jr. et al. (US 5,116,159).

Rejections based on 35 U.S.C. § 103 do not relieve the obligation to explain why the differences between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. In regard to Applicant's Claim 1, there is one claimed limitation that is

not taught or suggested in any of the prior art references, nor is it addressed directly by the Examiner. Specifically, the prior art, as applied, fails to teach, suggest or motivate “an annular metal upper bearing... having... a split segment extending from said inner surface to said outer surface.”

Of course, the mere existence of differences between the prior art and the Applicant’s claimed invention does not prove non-obviousness. However, it is well-settled that the gap between the prior art and the claimed invention may not be so great as to render the claim non-obvious to one reasonably skilled in the art. The Examiner must establish a legitimate basis for holding that the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts.

Upon considering the scope and content of the prior art as required under *Graham*, any good faith analysis will come to appreciate that all-metal bearing constructions were abandoned with the advent of high density plastic materials such as nylon. While less durable than metal, polymer bearing materials provide better friction characteristics, lubricity and shock absorption. As a result, the industry has moved away from all-metal bearing designs. Applicant’s claimed invention moves in a direction different than the technology trends which have been documented in the cited references, by returning to an all-metal bearing construction for purposes of substantially increased resistance to wear. In order to overcome the historic shortcomings and disadvantages inherent in all-metal bearing constructions, the Applicant has developed a combination of features, as recited in Claim 1, which enable use of the now antiquated all-metal construction. The claimed all-metal construction rivals and even supersedes the load carrying capabilities of current bearing constructions. One particular enabling feature includes the

claimed annular metal upper bearing having a split segment extending from its inner surface to its outer surface.

Only Herbenar '110 is cited in the Final Rejection as describing a split metal upper bearing (40). The Office Action incorrectly states, however, that the Herbenar upper bearing (40) is made of a metal composition. Rather, the split upper bearing (40) taught by Herbenar is made of nylon. (See Column 4, lines 7-12.) Indeed, the Examiner has not cited any example of a prior art reference within the Applicant's field of endeavor which utilizes an annular metal upper bearing having a split segment therein.

Accordingly, it is respectfully submitted that the Applicant's claimed invention, as set forth in Claim 1, defines subject matter which is neither shown nor disclosed in the prior art, and for which one reasonably skilled in the art would not consider it obvious to construct.

The Applicant is also mindful that the Federal Circuit remains staunchly opposed to the use of non-statutory hindsight analysis. In fact, the Federal Circuit currently applies a flexible TSM test as a method of guaranteeing that non-statutory hindsight analysis does not occur within the context of patent examinations. The Federal Circuit seeks to assure that the obviousness tests applied by Examiners proceed on the basis of evidence – teachings, suggestions, or motivations – that arise before the time of invention as the statute requires. As such, the current rejections against Applicant's claims based on incomplete prior art would seem to violate the prohibition against use of non-statutory hindsight analysis. For all these reasons, it is respectfully requested that the rejection of Applicant's pending claims be withdrawn and that the claims, as amended herein, be allowed.

The Applicant proposes an amendment to Claim 1 for the purpose of clarifying its intention to establish a direct, metal-to-metal contact between the outer surface of annular metal bearing 150 and the inner side wall of the metal housing 102.

**Concluding Remarks**

Reconsideration of this application as amended is respectfully requested.

It is believed that this application is now in condition for allowance. Further and favorable action is requested.

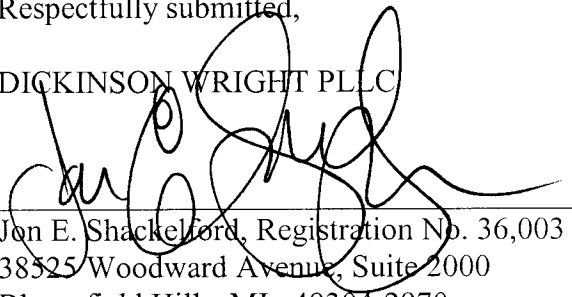
The Patent Office is authorized to charge any fee deficiency or refund any excess to Deposit Account No. 04-1061.

Respectfully submitted,

DICKINSON WRIGHT PLLC

Date: \_\_\_\_\_

6-1-2009

  
Jon E. Shackelford, Registration No. 36,003  
38525 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304-2970  
734-623-1734